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An Investigation into the use of the Deprivation of Liberty Safeguards with People with Intellectual Disabilities

Abstract (181 words)

Background This small, qualitative study sought to develop a richer understanding of the way in which the deprivation of liberty safeguards (DOLS) were being used for people with intellectual disabilities (ID). It is important to note that this study was completed prior to the changes resulting from the P v Cheshire West and Chester Council Judgement.

Method Six DOLS cases were identified and two people involved in each case were interviewed, (care home managers, key workers, social workers, specialist nurses or psychologists) using semi-structured interviews. The data were analysed using Grounded Theory techniques.

Results The interviewees described DOLS as providing a framework leading to positive outcomes for the people they supported, in some cases avoiding inpatient stays. However they had a number of concerns including: lack of knowledge and training, potential under-use of DOLS and disappointment with case law.

Conclusion Overall these findings are encouraging in regard to the specific individuals for whom DOLS applications were made; however they also highlight the need for a stronger agenda regarding wider dissemination of information, and training about DOLS, as well as some reform.

Introduction

People with intellectual disabilities (ID) who display behaviour that challenges services are at risk of restrictive practices, such as locked doors, sedation with medication, and restraint. Deveau et al., (2009), for example, found that 30% of a sample of residential services for people with ID in the UK reported using restrictive physical interventions. Such practices can occur when those responsible feel that levels of risk cannot be managed in any other way, but the events at Winterbourne View showed how easy it is for these to become routine unlawful practices (Department of Health 2012).

Where “restrictions or restraint is frequent, cumulative and ongoing, or if there are other factors present” (p.20, Ministry of Justice 2008), it can be termed a deprivation of liberty. In England and Wales, , there was no legal mechanism to ensure that a thorough assessment was carried out prior to such practices, nor a way for people with ID and their families, to access a clear appeal process, until the Deprivation of Liberty Safeguards (DOLS) legislation came into effect in 2009

Deprivation of liberty safeguards were introduced after a European Court ruling following the ‘Bournewood Case’ (Department of Health, 2005). In this case, a man with severe autism (HL) was admitted to Bournewood psychiatric hospital after a worsening in his self-injury. He did not have the capacity to make decisions about his care, he was not allowed to leave hospital, and had restrictions put on visits from his carers. HL was not detained under the Mental Health Act 1983, and was instead accommodated in his best interests. However the European Court ruled that this decision lacked appropriate safeguards. Consequently, the government introduced DOLS for people who lack capacity and are not detained under the Mental Health Act, for decisions to be made about their care. DOLS contain detailed stipulations about the circumstances in which deprivation of liberty can be authorised in hospitals and care homes. They also provide a legal framework for people for whom DOLS applications are made and their representatives, through which they can challenge unlawful deprivation, and provide a right for plans to be regularly reviewed. It is important to also recognise that, in addition, DOLS may serve the purpose of protecting people who have capacity from being inappropriately detained or deprived.

Deprivation of liberty safeguards are applicable in England and Wales to people who are over 18, lack the capacity to consent to the question of “whether or not they should be accommodated in the relevant hospital or care home for the purpose of being given the relevant care or treatment” (DOLS code of practice, p.45), and are deprived of their liberty. The typical populations in receipt of DOLS are older people with dementia, people with ID and/or brain injury, and people with mental health needs.

In operational terms, managing authorities (care homes or hospitals) are required to make applications to supervisory bodies (local authorities) when they identify a potential deprivation of liberty. A Best Interests Assessor and Mental Health Assessor are then allocated to explore whether the qualifying requirements are met. These requirements are determined by a series of assessments: an age assessment, a mental disorder assessment, a capacity assessment, an eligibility assessment, a no refusals assessment and an assessment of best interests/least restriction. The person or supervisory body must also appoint a representative, to support and represent the person in relation to the safeguards and their review. This person can be someone close to the person

(unpaid), or a paid representative. An IMCA (Independent Mental Capacity Advocate) should be appointed if the person does not have a family member or friend to support them. Both the person for whom an application is being made and the (unpaid) representative should be able to access an IMCA. At the time the study was completed, for people receiving support in other settings, such as those living with families or in supported living arrangements, DOLS did not apply, and authorisations were required from the Court of Protection.

Since their implementation, DOLS have received a number of criticisms. One of these arises from the variation in the extent to which DOLS have been applied in different local authorities. A freedom of information data request was made to the Health and Social Care Information Centre, to identify the proportions of DOLS applications made for people with ID. Across the three years (2009-10, 2010-11 and 2011-12), overall 13.9% of applications for DOLS and 14.9% of authorisations for DOLS, were for people with ID (the range across LAs were 0%-50% and 0%-62% respectively). This suggests different levels of protection for people with ID depending on their location.

It is possible that regional variation results from different interpretations of the term 'deprivation of liberty'. Prior to the implementation of DOLS, Lepping et al., (2009) investigated the prevalence of deprivation of liberty across North East Wales Trusts. In this study, no individuals were found to have been deprived of their liberty, as all were found to have 'at least some control over their daily activities or clear involvement of friends or relatives'. Cairns et al., (2011), however found a less clear picture. The authors found that the overall level of agreement on what constituted a DOLS issue, between 23 professionals, about 12 vignettes, was only 'slight'. The fact that the participants were self-selecting and had a special interest in DOLS may have influenced the findings, but this would have been likely to have resulted in more, rather than less, agreement. In an applied context, differing interpretations of 'deprivation of liberty' would surely result in the potential for unequal levels of safeguarding for adults at risk. More recently, Carpenter et al., (2013) conducted a survey to investigate which factors best interests assessors used when determining whether or not deprivation of liberty was occurring, using a series of vignettes. They concluded that decisions were taken within the context of an understanding of case law and DOLS code of practice (Ministry of Justice, 2008). Although this finding is promising, the sample size (93) was small and self-selecting (as with Cairns et al., 2011). In addition to this, there have been several developments arising from new case law and it is unclear how closely the authors connected their results with these revisions.

In order to investigate the views of those involved in the implementation of DOLS more generally, Varghese et al., (2012) surveyed the views of 171 psychiatrists through a postal survey. Due to the method used, the extent to which detailed information could be gleaned, is limited. However the most common concern raised by psychiatrists was the bureaucracy involved in implementation. Despite this concern, approximately half of the respondents felt that DOLS made a useful contribution to the provision of care, and half of respondents felt that DOLS should be extended to supported living services.

In order to look into cases more closely Jepson et al., (2014) studied the implementation of DOLS and their impact on care practice, across four local authorities. The study included interviewing 52 people from managing authorities and supervisory bodies about specific cases, and then interviewing a further 27 people around anonymised DOLS cases. The key findings were (p.1): managing authorities often had to be prompted by professionals to make DOLS applications; a key

indicator for DOLS was an individual trying, or repeatedly requesting to leave; managing authorities felt increased scrutiny following a DOLS application (for some this led to re-assurance, however others felt anxiety); Best Interests Assessors sometimes had limited time to complete assessments; most Best interest assessors felt that DOLS had a positive impact on peoples' human rights, and that decisions were made around a desire to keep people safe.

As well as the studies described previously, a number of reports have been written in relation to DOLS. The Mental Health Alliance report (2012) voiced concerns about the "extremely uneven" implementation of DOLS, the review and appeal procedure not complying with European law (p.13), and the process being overly bureaucratic. The alliance called for an urgent debate regarding whether the DOLS system needed to be replaced, but acknowledged that there were instances where DOLS could "perform a valuable protective function" (p.9). Similarly, the CQC (Care Quality Commission 2015, p.14), who are responsible for monitoring DOLS, referred to reoccurring themes through their reports between 2009 and 2014: low numbers of applications (up to March 2014), regional variations in application rates, lack of understanding and awareness of the Mental Capacity Act, and failure to notify CQC of authorisations. In addition, the House of Lords Select Committee (2014) published a report describing DOLS as "overly complex", "not well understood", and "poorly implemented" (p.7). The authors referred to "thousands, if not tens of thousands" being deprived without the protection of the law and stated that DOLS are sometimes used to oppress rather than protect. A recommendation was made for a "comprehensive review of the safeguards with a view to replacing them with provisions that are compatible in the style and ethos of the rest of the Mental Capacity Act" (p.7). The government agreed with this recommendation and the Law Commission began a consultation in 2015, to be published in 2017 (HM Government, 2014).

Early case law used restrictive and varying definitions of deprivation of liberty which led to few people being considered eligible for DOLS. Since the current study was completed there has been a significant case which resulted in a new, and much clearer, understanding of the term "Deprivation of Liberty". In the *Cheshire West and Chester Council v P* case, deprivation of liberty, was described as 'being under continuous supervision and control and not free to leave'. Lady Hale (Deputy President of the Supreme Court) stated "The fact that my living arrangements are comfortable, and indeed make my life as enjoyable as it could possibly be, should make no difference. A gilded cage is still a cage." This definition highlights that deprivations of liberty can occur regardless of where someone may be living (in their own home, supported living, hospital or registered care home) and regardless of whether or not they are attempting to leave. Clearly, far more people's circumstances meet this threshold than those previously thought to meet the criteria for DOLS. In July 2015, in light of the *Cheshire West* decision, and the extreme burden being placed on local authorities to respond to increasing numbers of DOLS applications, the Law Commission opened a consultation on the law of mental capacity and deprivation of liberty (Law Commission, 2015).

In summary the research and reports that are available highlight the problem of defining the term 'deprivation of liberty' and the difficulty of the variation in the use of DOLS. The considerable criticism has meant that there has been little investigation into whether aspects of DOLS are working well.

There are specific issues relating to people with ID that merit investigation into this population. People with ID may be in receipt of restrictive practices for a greater proportion of their lives than,

for example, people diagnosed with dementia. People with ID are more likely to rely on others to make decisions about their care, their capacity to make decisions about their care and treatment is more likely to have been stable therefore they are less likely to have made advance statements, or advance decisions. People with ID are also more likely than those with dementia to be placed out of area, or in assessment and treatment units where distance from relatives can prevent scrutiny of practice.

There is little research relating specifically to the use of DOLS for people with ID, and the views of paid care staff and professionals. Analysis of these views may contribute to a better understanding of the impact of the concerns highlighted in previous literature.

Method

Design and ethical approval

A case study design was implemented whereby semi-structured interviews were conducted with care managers (social workers or psychologists or nurses, from the local authority) and care home managers (from the managing authority) of people with ID for whom DOLS applications have been made. Six DOLS cases were identified, and two people were interviewed per case. A qualitative approach was employed to avoid constricting the scope of the data collected to pre-determined issues, and Grounded Theory techniques were used to analyse the data generated (Corbin & Strauss, 2008; Charmaz, 2006). Due to the likely involvement of people who lack capacity to consent to their participation, ethical approval was obtained through the Social Care Research Ethics Committee (SCREC).

Participants

As the interviews involved discussing specific details of individual cases, consent to the research was required from the people for whom a DOLS application had been made (even though they were not interviewed for the research themselves). If they lacked capacity to consent to the research, advice from a consultee was obtained. Consent was also obtained from all those interviewed (see Table 1).

DOLS leads in four London boroughs and two counties in south east England were contacted, as well as service provider organisations and advocacy groups across England and Wales, in order to identify potential participants. The 12 final participants were from two London boroughs, one county in south east England and one county in the north of England. In total, twelve interviews were conducted with people involved in six DOLS cases (see Table 1). Two individuals were interviewed for each of the six cases. For five of the six cases this was one person from the managing authority (care home manager or key worker) and one person from the local authority (a social worker, psychologist or nurse). For one of the cases a social worker and a psychologist were interviewed. The people from local authorities who were interviewed were involved in care planning, or providing direct support for the person concerned, rather than being best interests assessors or DOLS leads. The

research was more concerned with the outcome of the DOLS assessment, and the experience for those involved in supporting or care planning for the individual, rather than the procedure and process of the assessment itself. It was hoped that this would lead to a longer term, broader understanding of DOLS for people with ID.

(Table 1 about here)

DOLS applications were made for reasons ranging from frequent absconding, physical aggression, self-harm, and disinhibited sexual behaviour. The deprivations being proposed included limiting access to community facilities, 1:1 support, and moving house. All of the applications were authorised, and three of the six authorisations were followed by a recommendation to apply to the Court of Protection.

Procedure

Participants were interviewed once, for approximately one hour. A semi-structured interview schedule was used, and questions used in subsequent interviews were adapted to investigate arising themes in line with the grounded theory approach. Paid carers and professionals were not asked to speak on behalf of people for whom DOLS applications have been made, but to speak about their own experience of the DOLS process. Confidentiality was maintained by using codes to anonymise participants during the transcription process, and by deleting the audio recordings once they had been transcribed.

Once the interviews had been transcribed, they were emailed to interviewees, who were offered one month to request alterations to the transcript, however no requests for alterations were made.

Analysis

Consistent with the principles of Grounded Theory, the analysis and collection of data were completed simultaneously (Glaser and Strauss, 1967, cited in Charmaz 2006, p. 5). Line by line coding was used for the first three interviews to facilitate a detailed examination of the transcripts. This coding was more intensive, to help establish an 'analytic story' (Corbin and Strauss, 2008, p.318). For the subsequent interviews open coding was used to develop concepts.

Throughout the coding process memos, 'informal analytic notes' (Charmaz, 2006, p.72) were written and revised to explore emerging ideas. The memos were developed into themes and sub themes. The transcriptions were then highlighted according to the themes. The interview transcriptions were analysed to identify the number of participants who lent support to the themes, to convey their pervasiveness. Associations between the themes were made, to form a broader theory of how the DOLS process has been experienced. This was then developed into a diagrammatic model (see Figure 1)

To ensure internal validity a sample (four) of the interviews were independently analysed and categorised by a second researcher. There was a high degree of agreement in the categories identified, indicating that the themes are valid.

Results

Five main themes and eighteen subthemes were identified (see Figure 1).

Figure 1 about here

Theme 1: Service context

Interviewees expressed a number of concerns with regard to the extent to which people with ID were currently safeguarded from unlawful instances of deprivation, although they felt that the specific cases discussed were managed appropriately. Their concerns related to the organisational factors and the service context, and these concerns were felt more strongly by those from local authorities than from managing authorities. We describe these concerns in detail below:

Supported living:

Nine interviewees (2 from managing authorities and 7 from supervisory bodies) felt DOLS should apply to supported living services, as well as residential care homes and hospitals.

2Lb: ...we're increasingly using standalone ...or small supported living services for people with quite challenging needs which is entirely appropriate and often in their best interest, but I don't see why DOLS shouldn't apply to them.

Difficulty influencing practice in hospitals and out of area placements

Three interviewees (from supervisory bodies) felt that staff in hospitals were particularly lacking in knowledge about DOLS, and thought it was difficult for local authorities to influence services for people with ID residing in out-of-area placements.

2Sa: we still have a very high number of people who are in out-of-area placements and then ultimately it is down to...the placement monitoring officer, that would go out and review those placements and I think those are the people that continue to be very, much more vulnerable to DOLS issues and ...safeguarding issues as a whole. So ultimately all these systems are great in principle but you need people there to implement them and to decide that there are issues and the out-of-area placements and learning disability hospitals continue to be places that are less accessible.

There were also concerns about the knowledge and understanding of home managers. Eleven interviewees (4 from managing authorities and 7 from supervisory bodies) felt this may influence the likelihood of DOLS applications being made

5M: there is a danger that people can forget that it's an option that is there, that is useful. ...because I've never used it before I didn't see it in a positive way. It's only because... I took that step to do it, I've realised just how positive it is

Ability to identify instances of deprivation of liberty

All 7 interviewees from supervisory bodies suggested that professionals and inspectorial bodies were limited in their capacity to detect instances requiring a DOLS application

5L: Nobody knows what goes on behind closed doors...I think that's something that CQC also need to look at changing. Because up until very recently most of their visits were announced, the same with social services all ours were announced. Unless somebody were to raise a concern for example then you would go out unannounced. But it is quite nice sometimes to drop in unexpectedly, because you then get a true picture.

Disappointment with Case law (prior to Cheshire West case)

One interviewee (from a local authority) was particularly disappointed with the development of case law.

3L: I thought it would be really safeguarding people and also helping them to get enough support to avoid deprivation, ...So I was quite excited in the beginning, but ... I'm really worried ... that they are ... allowing more and more restrictive practices and saying 'oh it's not deprivation of liberty, it's pure restrictions and it's normal when you have those kind of abilities to be restricted in that way' and I think ... mm is it?

Need for more relevant training, and accessibly sharing case law

Seven people interviewed (5 from supervisory bodies and two from managing authorities) felt that they would benefit from increased training about DOLS and improved dissemination of case law.

2Sa: we don't get briefings on it we don't sort of see how things have shifted ...stuff that I was able to find independently was still very much in ... case law language and was much more about a legal position rather than what it translated to in practice

Theme 2: Crisis and uncertainty

Prior to making applications, the interviewees, particularly those from managing authorities who were responsible for completing the DOLS application described a sense of worry and uncertainty.

Long history of behaviour that challenged services followed by a crisis

A range of circumstances preceded the DOLS applications; however, nine interviewees (4 from managing authorities and 5 from local authorities) described the person with ID as having a complex history, culminating in a crisis. The range of crises included police involvement, aggression within the community, and absconding.

2Lb: one might call it the straw that broke the camel's back really.... Often with quite complex cases..., it's not really sustainable but you're not sure. Often what happens is there comes an incident that decides it almost one way or the other ...this isn't working and this is dangerous. And we'd sort of exhausted ... lots of the options in trying to find safe spaces for this young man.

Degree of intellectual disabilities

Two interviewees stated that DOLS were not an obvious option, as they perceived DOLS as mainly being used for people with severe ID. One interviewee stated:

6L: My stereotype is it would be more typically used for someone with a more severe learning disability, but actually it has appropriately safeguarded her.

Uncertainty: restriction or deprivation

Nine interviewees (4 from managing authorities and 5 from local authorities) described uncertainty relating to whether deprivation or restriction was occurring, and thus whether or not a DOLS application was required.

1M: at the beginning it was very unclear as to whether deprivation was occurring or whether it was proportionate restrictions and I felt the pressure of that actually... I was thinking ah I don't wanna waste anybody's time, this was also coming from the DOLS people that there was a bit of uncertainty.

2La: it ends up being about numbers, ... do we think that if someone goes out three days a week that that's sufficient or do we think if someone isn't able to go out for two weeks...there's still quite an element of subjectivity.

Negative perceptions of DOLS

Prior to making the decision to make an application, two of the care home managers interviewed described viewing DOLS negatively, rather than as something that might be helpful.

5M: you only hear about DOLS, and I think the way it is said 'deprivation of liberty,' you think it's a negative thing...it took me a while to understand that it was the right thing to do... You're always going to struggle with making such a decision...because if you've never used it before you really don't understand what it is all about.

Professional advice

Six interviewees (3 from managing authorities and 3 from local authorities) said that they consulted with other professionals, including those working within safeguarding teams or from the local DOLS office, prior to making the application. This was a key component in the decision to make an application.

1M: I wouldn't have had the confidence I don't think just to have gone straight in with "right I'm gonna make an application now", I ... sought some reassurance or some consultation from other professionals.

Theme 3: Quick DOLS assessment and authorisation but some concerns

After discussion with professionals, and having made a DOLS application participants described the assessment and authorisation process as being swift. A number of concerns, however, arose from the interviews about this process (outlined below) and this forms the third theme.

Eight interviewees (4 from managing authorities and 4 from local authorities) described the DOLS assessment process as being quick and running smoothly.

1M: I got the impression that ... they're very much keeping to the rules around the DOLS ...

Possibly too quick to ensure that all relevant people are consulted.

However one person interviewed (from a local authority) was concerned that sticking to the strict timescale could mean that important professionals are not consulted.

6L: it's very positive that something happens quickly, and it doesn't drag on for... weeks. But had the situation been different or had I ... had concerns about the staff team or concerns about the issue, then I wouldn't have been able to input into that process. As it was I felt ...pretty confident that what this lady was being asked for was appropriate. But if I felt differently I would have not been able to raise those issues, so the speed was a downside there.

Best Interests Assessors lacking knowledge of ID

For two of the people with ID the assessment was carried out by someone from older adult services, which was a concern raised by one of the people interviewed (from a local authority):

3L: they don't know learning disability, so I think they are quite agreeable 'oh yeah of course' ... because they're looking at it a little bit from the field that they come from...old people who have been through their whole life with choices and control and they're in their 70s and 80s and comparing that with a young person's life, ... 'oh they go out, 2, 3 times a week, that's ok, it might not be deprivation of liberty'. And you know if you're 19 years old, and young and full of energy, they should have a normal life.

Difficulties with Representative role

For five of those interviewed (3 from managing authorities and 2 from local authorities) forming a positive relationship with the person's relevant representative was described as being a difficult task. They referred to strong differences in opinions.

5M: Oh, it's been hard, it's been hard. I ended up applying for an advocate.

There also appeared to be a lack of knowledge regarding the nature and importance of the role of the person's relevant representative. In three of the interviews it transpired that managing authorities did not recognise the extent of their obligations to ensure that the role of the relevant person's representative was fulfilled following the DOLS authorisation.

1M: She thanked me but didn't ever get back to me about that so I've left it at that. I believe the assessors ... did make contact with her [the person's relevant representative] ...If anything I would perhaps say quite a mute partner to all of this.

IMCA involvement too brief to be meaningful:

Three of those interviewed (two from local authorities, 1 from a managing authority) who had experienced IMCA involvement described the amount of input being limited, which had an impact on its utility. Interviewees did not express concerns with regard to whether IMCAs met their obligations, however it is not clear whether interviewees fully understood what the role entails.

2La: So he did have a brief assessment from an IMCA but it didn't actually give us much more information than we had already.

4M: The IMCA would ask if X is happy,... how he was getting on generally, what activities he was doing, but ... I never felt that it went any deeper than that.

Theme 4: Clarity and a way forward

Following the DOLS authorisation interviewees described a sense of relief at achieving greater clarity about how to proceed and this was the fourth theme. They described a successful DOLS application as leading to more resources and professional input, and a positive outcome for the person for whom the DOLS application was made, including in some cases avoiding inpatient admission.

Five of those interviewed (2 from managing authorities and 3 from local authorities) described relief through clarifying a process to follow to move on from the crisis situation.

2La: it was positive in that it gave a very clear framework for how we could work through a difficult period, and I think that was very useful, out of the DOLS assessment came very clear recommendations

Valued professional input and resources:

Although for some there was already a lot of involvement from professionals prior to an application being made, two interviewees (from local authorities and managing authorities) described their appreciation of the increased professional support and resources (often in terms of an increase in finances towards the care package) following the DOLS authorisation.

3L: with the DOL there might be safeguarding resources going her way ..., because you are under that kind of framework and the local authority works really hard to ensure that you've got ... good practice around it because it's very transparent.

5M: Things that I had been struggling with for a while suddenly I got an influx of help with it which was really good.

Positive outcome for person with an ID, avoided possible inpatient stay

Ten interviewees (4 from managing authorities and 6 from local authorities) described DOLS leading to a positive outcome for the person with ID, and removing the need for more severe deprivation, such as admission to an assessment and treatment unit, or a forensic setting.

2Lb: If he'd hurt someone else out in the community, the potential repercussions for him, let alone for ... whoever he hurt, were massive ... he could have gone down the forensic route.

5M: I suppose I could see if it continued that way he would probably end up being sectioned...It's allowed us to slowly reintroduce, and it also allowed us to slowly put in strategies as well without overloading him.

Theme 5: Court of Protection

For three of the cases discussed the DOLS authorisation was followed by a recommendation to apply to the Court of Protection and this formed the fifth theme.

Safer decision

Two interviewees (from a managing authority and supervisory body) felt that the involvement of the Court of Protection was entirely appropriate, and described it as providing a safer forum for making such a complex decision (especially when the DOLS was likely to be renewed several times), because the Court offered a wider and more independent perspective.

1S: I think it's unjust to just keep renewing something. The safest decisions are always decisions that are made collectively with a large ...audience and at some point I think if you're making those decisions and they're going on for a period of time and you're not making them with the Court and they are restrictive then ... I think you can question that practice.

Time consuming and expensive

However four interviewees (3 from supervisory bodies and 1 from a managing authority) who had completed the process at the time of being interviewed, had reservations about the Court of

Protection process, relating to the financial burden incurred, and amount of additional work required.

2Sa: it's not sustainable to have to go through that level of work. So I think there needs to be something, another mechanism... I don't think you could have a lot of cases like that... a service ...would stop functioning and wouldn't meet people's needs.

The overall theory of the process of DOLS (see Figure 1)

The first theme of service context is a stand-alone theme that influenced the participants' experience of the DOLS process as a whole, however it was particularly associated with a general mood of crisis and uncertainty (shown by the arrow linking the two themes in fig 1), felt prior to the DOLS applications. This state of crisis was alleviated through the involvement of professionals, and support and advice to make a DOLS application. The DOLS assessment followed the application, and was generally seen as an efficient process, however there were some concerns about whether this speed sometimes meant that the assessment was not as thorough as it could be, and involve the right people to the right extent. The completion of the DOLS assessment was a catalyst to further support, clear guidelines and recommendations and increased involvement of professionals. The final theme of the Court of protection was spoken about for some of the cases, but not all of them, and the Court of Protection process had only been completed fully for two cases (hence in the Figure there is a link with a broken line). However for three of the cases the DOLS assessment had been followed by a decision to apply to the court of protection, and interviewee's had strong feelings about their experience of this process and difficulties associated with it, so it was felt important to include this in the final theory. The process of implementing DOLS by those using was therefore experienced as chequered by difficulties, some of which could be resolved, as discussed below.

Discussion and Conclusion

Strengths and limitations

This was a small, exploratory study; however it is one of the first qualitative studies based on real cases, as opposed to vignettes, of an area that has proven to be very controversial. Despite attempts to recruit participants from a number of localities, this proved challenging. This may reflect a lack of confidence among practitioners surrounding DOLS, and a consequential reluctance to be interviewed about DOLS. High staff turnover and changes in allocated care managers may have also had an impact on the ease of arranging interviews when DOLS authorisations were made some time ago.

These recruitment challenges resulted in a small sample size, which is a clear limitation of this study, and means that the findings are not representative of the experience of implementing DOLS on a national level. However, it was beyond the scope of the study to build up such a picture, particularly as it has already been established, that people with ID living in different parts of the country receive unequal levels of protection (Health and Social Care Information Centre, 2013). Instead, this study sought to gain a detailed picture of the way the DOLS process has been experienced by some of those who have implemented it. Despite the difficulties with recruitment, some pervasive themes emerged early in the data analysis.

In addition to this, for all of those interviewed, the DOLS were authorised, and only one of the DOLS applications was made outside a care home. Therefore the data do not offer information on

the experience of those working with people for whom DOLS applications are not successful, and has very limited utility in describing experiences when DOLS applications are made within hospitals.

The attempt to establish internal validation through a second coder, produced results that were encouraging, though even greater rigour in the coding process could have been achieved through a higher proportion of the transcribed interviews being analysed by the second researcher earlier in the data collection period (LeCompte and Goetz, 1982 cited in Bryman 2004, p. 273). This would have allowed for comparisons and discussions about the coding process and identification of themes to be made, which could have informed the analysis of subsequent interviews, and improved internal reliability.

Interpretation and the future of DOLS

It is impossible to ignore the changes in context since the Cheshire West decision, and the ongoing Law Commission consultation. Nevertheless, the findings contribute to a clearer understanding of how DOLS were working for some people prior to the Cheshire West decision, and it is important that this knowledge is not lost in the development of future guidance and legislation. The study is also helpful in that it was carried out later than other research in DOLS (eg Varghese et al., 2012, and Lepping et al., 2009), therefore it presents a picture of how DOLS were working beyond their infancy.

The recent Cheshire West ruling clarifies the definition of deprivation of liberty, which was a concern for many of the participants in this study, who betrayed considerable uncertainty about what constituted a DOLS, whether they should apply for one, whether it would be helpful, whether others were sufficiently trained in the concept (these views appeared in a number of themes and sub-themes). They replicate findings from previous research (Cairns et al., 2011) too. So this clarification of the meaning of 'deprivation of liberty' is likely to be reassuring for many of those interviewed. However it is questionable whether services are under the level of scrutiny required to ensure compliance. This is particularly the case for supported living support arrangements and private dwellings, that do not receive CQC inspections, and have to make applications to the Court of Protection regarding instances of potential deprivation of liberty. The law commission have identified this as something they aim to rectify with their consultation (Law Commission, 2015).

The changes that have occurred since the Cheshire West decision mean that it is unlikely that the DOLS process is still considered to be "swift", as reported by participants in this study, considering the lower threshold for applications and consequential increased burden on Best Interests Assessors. Since the Supreme Court Ruling in 2014, ADASS have reported a 10-fold rise in cases leading local authorities to experience significant strain (McNicoll, 2015). This, combined with a lack of resources and trained professionals to complete DOLS assessments, could mean that opportunities to identify the best form of support and the least restrictive options are missed, and the obligations of IMCA's and relevant persons representatives are not fully met.

The findings here though have also highlighted positive aspects of DOLS including the utility of DOLS in facilitating increased professional scrutiny of practice and guidance, which has broadly resulted in what practitioners describe as positive outcomes for the people with ID concerned. Interviewees

described how using DOLS avoided placement breakdown, which could otherwise lead to lengthy inpatient stays. This finding relates closely to the current agenda of minimising the use of inpatient services, in particular those located out-of-area (Department of Health, 2012).

However, the importance of support and guidance for those making an application suggested that DOLS applications were more likely in instances where good working relationships were already in place. The findings in relation to lack of understanding of the existence and utility of DOLS, as well as what deprivation of liberty means, link closely to the CQC's concerns (2015) about a lack of understanding in relation to the Mental Capacity Act in general. Much consideration will be needed with regard to how any future legislation is introduced, so that it becomes well embedded, there is good knowledge and understanding within the field, and feelings of anxiety and uncertainty relating to any changes are reduced. The findings also uncovered concerns relating to the extent to which people's relevant representatives were consistently included and consulted, the role of IMCAs, and the experience of Best Interests Assessors. These concerns could manifest as huge limitations on the extent to which DOLS might fulfil the purpose of safeguarding people with ID. Issues regarding relevant person's representatives have also been made in the CQC 2015 report on DOLS (Care Quality Commission, 2015, p.25). The report refers to differences between paid and unpaid relevant person's representatives, with paid representatives doing more work with supervisory bodies, and being more likely bring challenges to the Court of Protection. In terms of the IMCA role, participants in this study described their input as brief and lacking in depth, however they did not express concerns in terms of the extent to which IMCA's met their obligations. Nevertheless it is important to think about these concerns within the context of the *AJ v A Local Authority* [2015] judgement. This judgement highlighted the critical role of the Relevant Persons Representative and the IMCA in challenging DOLS decisions, and referring cases to the Court when appropriate. In order for people to be fully protected of their rights, these issues will be needed to be addressed with any future safeguards.

Unlike previous research, this study focused on people with ID for whom DOLS applications had been made, rather than the whole population for whom DOLS may apply, and revealed concerns about Best Interest Assessors knowledge about supporting people with ID. It is of note that the DOLS Code of Practice (Ministry of Justice 2008, p.43) stipulates that consideration should be made as to whether Best Interests Assessors have 'experience of working with the service user group from which the person being assessed comes', reflecting the concerns of some participants in this study.

Taking the findings of this study overall, and considering the concerns raised by other bodies since this study was carried out, there seems little doubt that the House of Lords Select Committee (March 2014) is correct in its recommendation that a major review is required. It will be important that it is understood that the amount of bureaucracy involved is not the only problem associated with the Deprivation of Liberty Safeguards as they stand. It will be important that issues such as training and awareness raising about the new protections are considered. Perceptions arising from the wording “deprivation of liberty” may have made care home managers less able to see the potential benefits and importance of using the safeguards. Other considerations include use of assessors who have a good knowledge of intellectual disabilities, ensuring that people in receipt of safeguards have access to good quality advocacy and representation are all addressed to ensure the protection of people’s rights, in relation to deprivation of liberty in the future. The task will be to achieve this while also reducing the resources and bureaucracy involved in the process. The current financial climate can also not be ignored, some interviewees saw DOLS as a route to ensure that the least restrictive option was used (and the least restrictive option may not always be the cheapest). Provisions such as 2:1 support arose following a DOLS assessment for some of the cases discussed, and this may be less feasible in the current climate.

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Table 1 *Participant characteristics (people for whom DOLS applications have been made, and those interviewed)*

Participant Number	<u>Person with ID for whom DOLS application was made.</u>				<u>Person Interviewed</u>			
	Gender	Age	Capacity to consent to research	DOLS Authorised	Participant Code (M=managing authority, L= Local Authority)	Job Title	Gender	Age
1	Male	31	Yes	Yes	1M	Care home manager	Male	36
					1L	Social worker	Male	46
2	Male	22	No	Yes	2La	Psychologist	Female	33
					2Lb	Social Worker	Male	60
3	Female	32	No	Yes	3M	Support worker	Female	55
					3L	Specialist Practitioner (Nurse background)	Female	43
4	Male	25	No	Yes	4M	Care home manager	Female	58
					4L	Social Worker	Female	51
5	Male	32	No	Yes	5M	Care home manager	Female	46
					5L	Social Worker	Female	47
6	Female	24	Yes	Yes	6M	Care home manager	Female	39
					6L	Psychologist	Female	41